

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

Updated to include agency responses.

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates)				
	<b>FY 2015-16</b>		<b>FY 2016-17</b>	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See Below			
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

**Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.**

This bill, as amended, would change provisions relating to DNA testing of biological material, and it also changes provisions relating to motions for new trial based upon discovery of new evidence.

The Commission on Public Advocacy estimated a minimal impact. They state that their current appropriation would cover any additional cases they may receive over the next biennium.

Lancaster County estimates a minimal fiscal impact. See their response for details. Although the response shows it is from "Lancaster County", it appears that the specific department is the Public Defender's office.

The Nebraska Association of County Officials (NACO) states that the fiscal impact to counties is unknown.

The following table summarizes the estimated impact to the Attorney General as estimated by the Attorney General:

ITEMS	FY2015-16	FY2016-17	FY2015-16	FY2016-17
	Number of Positions		Expenditures	
Assistant Attorney General	1.00	1.00	60,000	61,350
Investigator	1.00	1.00	45,000	46,013
Benefits			46,991	47,349
TOTAL	2.00	2.00	151,991	154,712

The Attorney General states that the allowance of unrestricted unlimited filings for new trial motions may result in a significant increase in filings, although they state it is difficult to accurately predict the number of additional filings which will occur. They say that there is a possibility that a large number of filings will require additional representation to handle legal proceedings and additional investigation to look into allegations. They also state that expansion of the DNA act may add to the office's workload. See the attached response of the Attorney General for details.

The following table summarizes the estimated impact to the Nebraska State Patrol as estimated by the Patrol:

	FY2015-16	FY2016-17
ITEMS	Expenditures	
2.0 Forensic Scientist	96,583	96,583
Benefits	30,906	30,906
Operating	31,783	31,783
Crime Lab equipment	168,290	0
TOTAL	327,562	159,272

The Nebraska State Patrol states that the initial review of LB 245 indicated that the bill would have little to no impact on the Nebraska State Patrol Crime Laboratory because it addresses only post-conviction testing. However, recent conversations with the Attorney General's Office as well as the Lancaster County Attorney's Office indicated that in an effort to prevent the need for additional post-conviction DNA testing under the language of LB 245 as amended, the prosecutors will request the DNA testing of most or all of the evidence prior to trial. Currently, only a small percentage of the evidence in most cases is submitted for testing due to the time and expense associated with DNA testing. With the current limited sample approach, LB 245 will have little to no impact on the laboratory. Should the prosecuting attorney's from across the state begin to request that all evidence be tested prior to trial, the impact on the laboratory will be significant. The increase in the caseload associated with testing all evidence in a case, as indicated by the prosecutors, is estimated by the State Patrol to result in a minimum of 750 additional samples, and potentially as many as 1,500 additional samples. See the attached response of the Nebraska State Patrol for details.

The Attorney General and other prosecuting attorneys could change their testing procedures under current law without LB245 being enacted, and the Patrol's Crime Lab could have a substantial increase in their workload as a result. However, this bill does not appear to provide incentives for such changes in any meaningful volume. There is no reason to presume procedures will change dramatically from current law upon passage of this bill, thus no additional fiscal impact is anticipated.

Please complete ALL (5) blanks in the first three lines.

**2015**

**LB<sup>(1)</sup> 245**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup>

Nebraska Commission on Public Advocacy

Prepared by: <sup>(3)</sup> James R. Mowbray

Date Prepared: <sup>(4)</sup> 3/17/2015

Phone: <sup>(5)</sup> 402-471-7774

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2015-16</u>		<u>FY 2016-17</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
0				

Explanation of Estimate: It will have a minimal impact. With new testing, there may be an increase in cases, but I can't predict it that will happen or when. I believe that the \$75,000 in spending authority that we currently have and will have over the next two years should cover any additional cases we may receive as a result of the passage of LB 245.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2015-16</u>	<u>2016-17</u>
	<u>15-16</u>	<u>16-17</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				

Please complete ALL (5) blanks in the first three lines.

**2015**

**LB<sup>(1)</sup> 245**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup>

Lancaster County

Prepared by: <sup>(3)</sup> Joe Nigro

Date Prepared: <sup>(4)</sup> 3/18/2015

Phone: <sup>(5)</sup> (402)441-7631

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2015-16</u>		<u>FY 2016-17</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate: We see a minimal fiscal impact on the County based upon this bill. The bill as we understand it, eliminates the three year limitation on filing a motion for newly discovered evidence. The number of cases involved would be minimal as it would only involve cases which went to trial, the defendant was convicted, received a prison sentence of 6 years or more (Because, with good time, 6 years means 3 years, and the bill only affects those inmates who seek to file motions beyond 3 years.), filed a motion for new trial after 3 years, and was able to get a hearing on a motion for new trial based upon newly discovered evidence. The other cases involved would be cases which went to trial, the defendant was convicted, and the defendant was able to get a hearing on a motion for new trial based upon DNA evidence. The total number of all of these cases would be so few that it would not require any additional staff, and would likely result in minimal other expenses to the County.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2015-16</u>	<u>2016-17</u>
	<u>15-16</u>	<u>16-17</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

Please complete ALL (5) blanks in the first three lines.

**2015**

**LB<sup>(1)</sup> 245**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Nebraska Association of County Officials (NACO)

Prepared by: <sup>(3)</sup> Elaine Menzel Date Prepared: <sup>(4)</sup> 3/18/2015 Phone: <sup>(5)</sup> 402-434-5660

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

	<u>FY 2015-16</u>		<u>FY 2016-17</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
<b>TOTAL FUNDS</b>	<b>=====</b>	<b>=====</b>	<b>=====</b>	<b>=====</b>

Explanation of Estimate:

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2015-16</u>	<u>2016-17</u>
	<u>15-16</u>	<u>16-17</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....			_____	_____
Operating.....			_____	_____
Travel.....			_____	_____
Capital outlay.....			_____	_____
Aid.....			_____	_____
Capital improvements.....			_____	_____
<b>TOTAL.....</b>			<b>=====</b>	<b>=====</b>

In certain circumstances, a judicial hearing and new trial would be provided to defendants. The fiscal impact to counties is unknown.

Please complete ALL (5) blanks in the first three lines.

2015

LB<sup>(1)</sup> 244/ LB245

FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup> Attorney General

Prepared by: <sup>(3)</sup> John Freudenberg Date Prepared: <sup>(4)</sup> 3-17-15 Phone: <sup>(5)</sup> 402-471-2687

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2015-16</u>		<u>FY 2016-17</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	\$151,991.00		\$154,712.00	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$151,991.00		\$154,712.00	

Explanation of Estimate:

The allowance of unrestricted and unlimited filings of motions for new trial based upon newly discovered evidence may result in a significant increase of such filings. It is difficult to accurately predict the number of additional filing which will occur. However, due to the lack of any form of limitation on the number of such motions a convicted person can file, there is a possibility that there will be a large number of added filings will require additional state representation to handle the superfluous legal proceedings; and additional investigative assistance will be required to look into allegations, which under the bill, can be brought years or even decades after the judgment of conviction. Further, the expansion of the DNA testing Act may also add to the office's legal and investigative workload. There is a possibility that increased post-conviction filings such as the two addressed in this bill could result in the need for an additional attorney and an additional investigator in the Attorney General's Office.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2015-16</u>	<u>2016-17</u>
	<u>15-16</u>	<u>16-17</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Assistant Attorney General	1.0	1.0	60,000.00	61,350.00
Investigator	1.0	1.0	45,000.00	46,013.00
Benefits.....			46,991.00	47,349.00
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			\$151,991.00	\$154,712.00

Please complete ALL (5) blanks in the first three lines.

2015

LB<sup>(1)</sup> 245, AM197, AM843

FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup> Nebraska State Patrol

Prepared by: <sup>(3)</sup> Carol Aversman Date Prepared: <sup>(4)</sup> 3-17-15 Phone: <sup>(5)</sup> 402-471-4545

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2015-16</u>		<u>FY 2016-17</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	\$327,562		\$159,272	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	<u>\$327,562</u>		<u>\$159,272</u>	

**Explanation of Estimate:**

The initial review of LB 245 indicated that the bill would have little to no impact on the Nebraska State Patrol Crime Laboratory because it addresses only post-conviction testing. However, recent conversations with the Attorney General’s Office as well as the Lancaster County Attorney’s Office indicated that in an effort to prevent the need for additional post-conviction DNA testing under the language of LB 245 as amended, the prosecutors will request the DNA testing of most or all of the evidence prior to trial. Currently, only a small percentage of the evidence in most cases is submitted for testing due to the time and expense associated with DNA testing. With the current limited sample approach, LB 245 will have little to no impact on the laboratory. Should the prosecuting attorney’s from across the state begin to request that all evidence be tested prior to trial, the impact on the laboratory will be significant. With the current case load, the lab operates with a four to six month turnaround time. This turnaround time can result in numerous continuances or rush requests to accommodate speedy trial issues. The increase in the caseload associated with testing all evidence in a case, as indicated by the prosecutors, is estimated by the State Patrol to result in a minimum of 750 additional samples, and potentially as many as 1,500 additional samples. The costs noted in this Fiscal Note are based on the 750 additional samples. It is important to note that the 750 additional samples, and the costs associated with such, is an estimate that the State Patrol considers to be at the low end of the range of possible additional samples and costs that could be generated as a result of this bill.

The DNA testing and verification process is a very complex and time-consuming process. Evidence processing begins by a physical exam and documentation of each item of evidence. The examination and documentation may take anywhere from one hour for a simple one item case to one or more days, for example, for only the bedding in a sexual assault case. A typical sexual assault kit often requires four hours at a minimum for the physical examination alone.

After the evidence examination is completed, each sample is subjected to an extraction procedure, quantitation procedure, amplification procedure, followed by a typing procedure. After the typing procedure is completed, the data must be analyzed and interpreted before a report can be written. The analysis and interpretation of DNA data is not as clear-cut as in many diagnostic testing procedures and requires the careful evaluation of many nuances in each sample. For example, for a current complex case that is pending at the lab, the scientist has spent eight hours interpreting six samples and the analysis is not yet complete. Each report must be technically reviewed by a second qualified scientist. The technical review process includes a complete review of all analysis performed, interpretations made, and conclusions reported to ensure scientific accuracy. Considering the example just given, the second analyst will be required to spend close to the same amount of time reviewing those interpretations for accuracy. Additionally, the scientists are periodically required to travel across the state to provide expert witness testimony regarding the conclusions and opinions that the

scientist issued. It is also important to note that the 750 sample number is only the estimated number of additional evidence samples, as other reference and elimination samples should not change, and therefore are not considered in the overall workload of each scientist.

Because of the complexity of the testing process, the State Patrol estimates that the increase in samples anticipated to be required by the prosecutors will require the addition of a minimum of two, and possibly as many as four, Forensic Scientists in order to maintain the current backlog and turnaround times. The State Patrol estimates that it would have an increase in costs associated with purchasing additional reagents, necessary Crime Lab equipment for the additional scientists, and the personnel costs of the additional scientists.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2015-16</u>	<u>2016-17</u>
	<u>15-16</u>	<u>16-17</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Forensic Scientist	2	2	\$96,583	\$96,583
Benefits.....			\$30,906	\$30,906
Operating.....			\$31,783	\$31,783
Travel.....				
Capital outlay.....			\$168,290	
Aid.....				
Capital improvements.....				
<b>TOTAL.....</b>			<b>\$327,562</b>	<b>\$159,272</b>